

## **Section 125.425 Civil Penalty Assessments**

- a) As used in this Section, "authorizing candidate" means any candidate who has at any time during the reporting period for the report in question or prior to that reporting period filed with the committee an authorization in accordance with Section 9-8 of the Election Code [10 ILCS 5/9-8].
- b) A report required to be filed within a specified time pursuant to Section 9-10 of the Election Code is delinquent if not received by the Board on or before the due date. Documents are deemed received by the Board as of the date date-stamped by Board staff on the documents submitted.
- c) If a report is or continues to be delinquent, it is subject to a civil penalty as set out in subsection (e) of this Section.
- d) When a report required by Section 9-10 of the Election Code is delinquent, the Board will send notice of delinquency to the chairman and the treasurer of each delinquent State, State and local, and local political committee, together with an Order assessing a civil penalty calculated in accord with subsection (e). The notice of delinquency and Order shall also be sent to any candidate listed by name on that committee's Statement of Organization. The notice of delinquency shall state that the Board has issued a civil penalty that will be final unless the committee shows cause in accord with subsection (f) why the penalty should not be assessed.
- e) The Board will calculate the civil penalty as follows:
  - 1) If the committee's total receipts, total expenditures, and the balance remaining at the end of the reporting period for which the delinquent report was due are each \$5000 or less, and if the delinquent report is a semi-annual report, the political committee shall be assessed a fine of \$25 per business day for the first violation, \$50 per business day for the second violation, and \$75 per business day for the third and each subsequent violation to a maximum of \$5000, except that, if the committee is formed for statewide office as that term is defined in Section 9-10(b) of the Election Code, the maximum shall be \$10,000, provided that the civil penalty for any committee shall not exceed \$500 for a first time offense involving a filing that is less than 10 days late.
  - 2) If the committee's total receipts, total expenditures, or balance remaining at the end of the reporting period for which the delinquent report was due exceeds \$5000, and if the delinquent report is a semi-annual report, the political committee shall be assessed a fine of \$50 per business day for the first violation, \$100 per business day for the second violation, and \$200 per business day for the third and each subsequent violation to a maximum of \$5000, except that, if the committee is one formed for statewide office as that term is defined in Section 9-10(b) of the Election Code, the maximum shall be \$10,000, provided that the civil penalty for any committee shall not exceed \$500 for a first time offense involving a filing that is less than 10 days late.
  - 3) If the committee's total receipts, total expenditures, and balance remaining at the end of the reporting period for which the delinquent report was due are each \$5000 or less and if the delinquent report is a pre-election report, the political committee shall be assessed a fine of \$100 per business day for the first violation, \$200 per business day for the second violation, and \$300 per business day for the third and each subsequent violation to a maximum of \$5000, except that, if the committee is one formed for statewide office as that term is defined in Section 9-10(b) of the Election Code, the maximum shall be \$10,000, provided that the civil penalty for any committee shall not exceed \$500 for a first time offense involving a filing that is less than 10 days late. The per business day penalty calculation will no longer accrue after the date of the election for which the report has been filed.

4) If the committee's total receipts, total expenditures, or balance remaining at the end of the reporting period for which the delinquent report was due exceeds \$5000, and if the delinquent report is a pre-election report, the political committee shall be assessed a fine of \$200 per business day for the first violation, \$400 per business day for the second violation, and \$600 per business day for the third and each subsequent violation to a maximum of \$5000, except that, if the committee is one formed for statewide office as that term is defined in Section 9-10(b) of the Election Code, the maximum shall be \$10,000, provided that the civil penalty shall not exceed \$500 for a first time offense involving a filing that is less than 10 days late. The per business day penalty calculation will no longer accrue after the date of the election for which the report has been filed.

5) If the delinquently filed report is a Schedule A-1 (report of contributions exceeding \$500 received during the 30-day period prior to an election), in the final disposition of any appeal of a penalty assessed by the Board for such delinquency on or after November 19, 2003 (the effective date of Public Act 93-0615), the Board will consider assessing a civil penalty as follows:

A) The Board may:

- i) grant the appeal (no civil penalty assessment);
- ii) determine that a violation occurred and impose a penalty of no less than 10% nor more than 100% of the total amount of the contributions that were delinquently reported; or
- iii) determine that a violation occurred, but decline to assess a penalty.

B) When considering the amount of the civil penalty to be imposed, the Board shall consider all relevant factors, including, but not limited to, the following factors:

- i) whether in the Board's opinion the violation was committed inadvertently, negligently, knowingly, or intentionally;
- ii) the number of days the contribution was reported late; and
- iii) past violations of Sections 9-3 and 9-10 of the Election Code by the committee (filing requirement for the Statement of Organization, Pre-Election Reports, Schedule A-1s and Semi-Annual Reports).

6) If the delinquently filed report is a Statement of Organization (form D-1), the Board shall assess

a civil penalty of \$25 for each business day that the report remains unfiled after its due date, except that, if the committee is supporting a candidate running for statewide office or supporting a statewide referendum or a State Constitutional Amendment, the civil penalty will be \$50 per business day. Such penalties shall not exceed \$5,000 (\$10,000 for statewide candidates, referenda or State Constitutional Amendment).

f) In addition to the civil penalties provided for in Section 9-10(b) and (b-5) of the Election Code, a committee or organization required to report under the Election Code may, for violations of provisions of Article 9 of the Election Code other than delinquent filing, be assessed a civil penalty under the provisions of Section 9-23 of the Election Code and this subsection. The Board will calculate civil penalties in accord with subsection (e). A committee that violates both Section 9-10 of the Election Code and an Order of the Board may be liable for separate penalties for each violation. In cases of alleged violation of an Order of the Board brought under the provisions of Section 9-23 of the Election Code, the Board will mail to each committee or organization alleged to be in violation of a Board order notice of a proposed civil penalty calculated in accord with the

terms of this Part, which proposed penalty shall become effective without further proceedings unless the committee or organization receiving the notice contests the proposed civil penalty. A political committee assessed a civil penalty under Section 9-10(b) or (b-5) for being delinquent in filing a required report or that has received notice of a proposed civil penalty for violation of a Board order under Section 9-23 may:

- 1) submit, within 30 calendar days after the mailing of the assessment notice, a request for waiver of appearance and appeal affidavit in the form provided by the Board stating the reasons for requested waiver of appearance and the reasons for the late filing or violation of the Board order, as the case may be, to show why a civil penalty should not be assessed. This appeal affidavit shall either be in writing made under oath and upon penalty of perjury sworn to before a notary public or any person authorized to administer oaths or be made pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109]; or
- 2) submit, within 30 calendar days after the mailing of the assessment notice, a request for hearing and appeal affidavit in the form provided by the Board stating the reasons for the late filing or violation of the Board Order, as the case may be, to show why a civil penalty should not be assessed. This appeal affidavit shall either be in writing made under oath and upon penalty of perjury sworn to before a notary public or any person authorized to administer oaths or be made pursuant to Section 1-109 of the Illinois Code of Civil Procedure [735 ILCS 5/1-109]; or
- 3) pay, within 30 days after the mailing of the assessment notice, the civil penalty assessed. If an appeal affidavit is filed, with or without waiver of appearance, the civil penalty shall not be due until the appeal is determined by the Board.

g) Post-Appeal Hearing Defense or Evidence

- 1) Any defense and any accompanying evidence upon which the appeal is based that is presented to the Board following an appeal hearing, either by personal appearance before or a written appeal submitted to a Hearing Examiner, shall be limited to the defense and evidence that was presented at the appeal hearing. The defense and evidence shall include, but not be limited to, interpretation of statute and rules, consideration of written or oral testimony tendered at the appeal hearing and consideration of documentary evidence tendered at the hearing.
- 2) Any defense and accompanying evidence that was not known, and could not reasonably be expected to have been known, by the respondent at the time of the appeal hearing may be presented to the Board. The Board may, upon motion or on its own motion, remand the defense and evidence back to the original Hearing Examiner, or may submit it to a new Hearing Examiner for consideration. If an issue exists as to the applicability of this exception, the Board shall rule upon the issue immediately after presentation of the disputed defense and evidence. The respondent in the case shall be given an opportunity to demonstrate to the Board that the disputed defense and evidence was not known at the time of the appeal hearing and the respondent should not have been expected to have been aware of the defense and evidence at the time of the appeal hearing.
- 3) Nothing in this Part shall be construed to prevent the respondent from being represented by counsel at the presentation before the Board when the counsel did not represent the respondent at the appeal hearing. Counsel shall be licensed to practice law in the State of Illinois as required by Section 125.60 of this Part.

h) If a political committee or organization required to report under the provisions of Article 9 of the Election Code subject to a civil penalty fails, within the time required, to make payment in full of the assessed civil penalty, then the Board shall proceed with efforts at collection pursuant to the Illinois State Collection Act of 1986 [30 ILCS 210]. The Board shall not hear an appeal of a civil

penalty imposed for delinquent filing or the violation of a Board Order if neither a request for waiver of appearance and appeal affidavit nor a request for hearing and appeal affidavit is filed within the time required.

- i) Notwithstanding any provision of this Section to the contrary, the Board shall stay the enforcement of any civil penalty in cases of first time violation of a filing deadline and shall stay the enforcement of a civil penalty for the violation of a Board Order where the committee organization has voluntarily entered into a stipulation admitting the violation and agreeing to the civil penalty. The stay shall continue only so long as no subsequent violations of Article 9 of the Election Code or of Board Orders occur. Violation of Article 9 of the Election Code or a Board Order will cause the civil penalty otherwise stayed to become immediately due and may expose the committee or organization to further liability in accord with this Section.
- j) For the purpose of this Section, second and subsequent violations are deemed to occur with reference to the time the first offense event occurs, not when a hearing, if any is required, concerning such first offense event is held. The Board may consider two or more allegations of violations at the same hearing, treating the first as an initial violation and the remaining as subsequent violations, imposing appropriate civil penalties for each.
- k) Notwithstanding any other provision of this Section:
  - 1) if an active political committee is assessed no more than one civil penalty under Section 9-10 during a two year period, it shall, after two years have lapsed following the assessment, be considered as never having violated Section 9-10. For a single violation, the two year period begins to run with the mailing of the assessment letter. If an active political committee is assessed more than one civil penalty and has paid all assessed civil penalties, it shall be considered for assessment purposes as not having violated that Section if it is assessed no other civil penalty during a two year period following receipt of payment by the Board;
  - 2) if a committee is assessed a single penalty under Section 9-10 and subsequently files a final report or has filed a final report prior to the assessment, during the two year period beginning with the date of the assessment letter, or the final Board Order if the assessment is appealed and the appeal is denied, any successor committee shall be considered, for assessment purposes, as not having violated Section 9-10 if it is assessed no other penalty;
  - 3) if a committee is assessed more than one penalty under Section 9-10 and subsequently files a final report or has filed a final report prior to the assessment, and the political committee has not paid the civil penalties, any successor committee that subsequently pays all civil penalties due shall be considered as never having violated Section 9-10 if, for two years from the date of receipt of payment by the Board, the successor committee is assessed no other civil penalty.
- l) Upon notice by the Hearing Examiner or upon request by any party, the Hearing Examiner may direct parties or their attorneys to appear at a specified time and place for a conference, either during or prior to any hearing, for purposes including, but not limited to:
  - 1) the formulation and simplification of issues;
  - 2) the necessity or desirability of amending the assessment notice for the purpose of clarification or correction;
  - 3) the possibility of stipulations concerning material facts;
  - 4) the limitations of the number of witnesses;

- 5) such other matters as may aid in the simplification of evidence and the disposition of the proceeding.

(Source: Amended at 29 Ill. Reg. 18796, effective November 7, 2005)